

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 18140 of 2006(H)

PETITIONERS:

- 1. SINIYA MOL.C.S. AGED 24,
D/O.SIDDIQUE, CHAKKACHAMAYATH HOUSE,
KANJIRAMATTOM, ERNAKULAM.**
- 2. MAYA K.V. AGED 25,
W/O.THANKAPPAN, CHAKKALAPPARAMBIL HOUSE,
KAIPPATTOOR P.O. ARAKKUNNAM VIA,
ERNAKULAM DISTIRCT.**
- 3. SOUMYA T.S. AGED 21,
D/O.SEKHARAN, THEKKANIYATH HOUSE,MAMALA P.O.
ERNAKULAM P.O.**
- 4. SUHARA BEEVI A. AGED 36,
W/O.ABDUL RAZAC K.P. KIHAKKEDATH HOUSE,
KANJIRAMATTOM, ERNAKULAM.**
- 5. MARY, AGED 29N YEARS,
W/O.STANLY, ANCHOOOLIAN HOUSE, MAMALA P.O.
MURIYAMANGALAM KARA, THIRUVANKULAM VIA,
ERNAKULAM.**

**BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI**

RESPONDENTS:

- 1. K.S.EB. REP. BY THE SECRETARY,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**
- 2. THE KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM. REP. BY ITS
SECRETARY.**

**BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SRI.K.S.ANIL, SC, KSEB
SRI.N.N.SUGUNAPALAN(SR.)SC,KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/12/2006, THE COURT ON 22.01.2007 DELIVERED THE
FOLLOWING:**

W.P.(C) NO.18140/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SSLC CERTIFICATE OF THE 1ST PETITIONER .

EXT.P2:- COPY OF THE NOTIFICATION OF THE 2ND RESPONDENT, DT.17.5.06, INVITED APPLICATION TO THE PSOT OF ELECTRICITY WORKER.

EXT.P3:- COPY OF THE ORDER B.O. NO.1509/0\98 (ESST II/19027/87) DT.13.7.98 OF THE 2\1ST RESPONDENT.

E.XT.P4:- COPY OF THE ORDER OF THE 1ST RESPONDENT AS PER B.O. NO.CPO/G188-89 (35) DT.25.9.89.

EXT.P5:- COPY OF THE ORDER OF THE 1ST RESPONDEN AS PER B.O. NO.1658/02 PSI, 1167/95 DT.10.12.02 .

EXT.P6:- COPY OF THE MEMO NO.EBEW/CG/2005.

/TRUE COPY/

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K.K. DENESAN, J.

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W.P. (C) No. 18140 OF 2006 H
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Dated this the 22nd January, 2007

J U D G M E N T

Are women unsuitable to perform the duties of Electricity Worker (Mazdoor) which involve climbing the poles, painting the transformers, assisting the engineers to draw electric lines, carrying materials to the work spot etc., requiring attention and execution round the clock? Whether Note (1) of Ext. P3 order of the Kerala State Electricity Board making women candidates ineligible for the above post is ultravires the Constitution of India?

2. Respondent No. 2-Kerala Public Service Commission (PSC, for short) issued Ext. P2 notification inviting applications for appointment to the post of Electricity Worker (Mazdoor) on requisition made by the Kerala State Electricity Board (hereinafter referred to, for short, the Board only). Ext. P2 was published in Gazette Extra-ordinary dated 17-5-2006. The method of appointment and the qualifications shown in Ext. P2 are in conformity with Ext. P3 rules. Note (2) to

clause 7 of Ext. P2 prohibits women as also physically handicapped from applying for the post of Electricity Worker.

3. The petitioners, five in number, it is stated, possess the prescribed qualifications. According to them, but for the prohibition imposed against women for direct recruitment, they are eligible and qualified to apply for the post. The age of the petitioners ranges from 21 to 36 years. The duties and functions, as understood by the petitioners include transporting materials from stores, loading and unloading materials in section offices, conveying the materials to various places, assisting the line staff for the line maintenance, issuing invoices and notices to consumers, lifting the poles etc.

4. Ext. P4 order issued by the Board prescribes the duties and functions of certain categories of the field staff including Electricity Workers. It shows that in addition to the duties stated by the petitioners in the writ petition, the Electricity Workers will have to attend the complete works connected with the distribution and dismantling of 11

K.V./L.T. lines including erection of transformers and accessories under the supervision of Engineers, works connected with 11 K.V./L.T cable laying and allied works including excavation of cable trench, spreading of river sand, laying of bricks, etc. and back filling including digging out old 11 K.V. cable when required, installing street lights at locations specified by the superiors, cutting and removing the undergrowth and overhanging of trees, shrubs etc. scrapping and painting transformers and other structures etc. It is contended that there is no valid reason to exclude women candidates and deny them opportunity to get employment as Electricity Worker under the Board.

5. Reliefs prayed for include a writ of certiorari to quash that part of Exts. P2 and P3 which prohibits women from being considered for appointment to the post of Electricity Worker (Mazdoor) and a writ of mandamus directing the 2nd respondent to issue erratum notification providing opportunity to women candidates who are desirous of getting appointment as Electricity Worker (Mazdoor) to apply for the post.

6. The challenge to Exts. P2 and P3 is founded on

two main grounds. (1) There is violation of gender equality which is not only a fundamental right guaranteed by the Constitution of India but also a universally recognized human right. (2) Ext. P3 is inherently discriminatory in as much as Note (1) and (2) of that order allow women who are the dependents of Board employees to get appointment as Electricity Worker under the compassionate employment scheme as also against 5% vacancies in that post reserved for part-time contingent workers in the service of the Board while imposing prohibition against women who apply under the direct recruitment quota. In support of the contention that Exts. P2 and P3 have done away with gender equality, Shri. K.S. Madhusoodanan, learned counsel for the petitioners cited the decisions of this Court in **Vijayamma v. State of Kerala** {1977 KLT 677}, **Rajamma v. State of Kerala** {1983 KLT 457}, **Omana Oomen v. FACT Ltd.** {1990 (1) KLT 614}, **Mariamamma v. Hindustan Latex Ltd.** {1993(1) KLT 899} and **Sheeba Kuttiatan v. State of Kerala** {2006 (3) KLT 69}. The decision of the Apex Court in **Govt. of A.P. v. P.B. Vijayakumar** {AIR 1995 SC 1648} also has been cited for consideration.

7. The Board has filed counter affidavit stating that Ext. P3 order was issued with the concurrence of the P.S.C. and that relaxation in the minimum height prescribed by the rules is available only to those women who are eligible to be considered on compassionate grounds from among the dependents of the Board employees as also those who belong to the category of part-time contingent workers with not less than 3 years service. According to the Board, women candidates are unfit to discharge the duties attached to the post of Electricity Worker, and therefore, Exts. P2 and P3 do not suffer from the vice of unjust discrimination. Women candidates who would get appointment as Electricity Worker from among the dependents of the Board employees on compassionate grounds and from the category of PTC workers consist only a small percentage of the total number of posts and therefore the relaxed norms will not adversely affect the effective and efficient functioning of the Board. It is contended that since women candidates are physically unfit to carry out the kind of manual labour which is arduous, their entry into service in

the general category as direct recruits will adversely affect the execution of important works like erection of electric posts, installing, repairing and maintaining transformers and climbing the poles in connection with the restoration of electric supply during day and night. It is for these reasons male candidates alone are allowed to apply for the post of Electricity Worker (Mazdoor) under the direct recruitment quota.

8. P.S.C. has not filed any counter affidavit. The stand taken by the P.S.C. is that Ext. P2 notification is in conformity with Ext. P3 order and that the procedure followed by the P.S.C. is valid and in accordance with law. The P.S.C., however, does not contend for the position that Ext. P2 would survive even if Ext. P3 is declared ultra vires.

9. The effect of Exts. P2 and P3 is to exclude women from applying for the post of Electricity Worker (Mazdoor) under the direct recruitment quota. It is not disputed that any such prohibition, only on the basis of sex would be unconstitutional. Article 15(1) of the Constitution of India prohibits

classification of citizen on the basis of sex for any purpose and Article 16(2), in matters relating to public employment. The Board made attempts to sustain Exts. P2 and P3 contending that the exclusion of women from getting employed as Electricity Worker by direct recruitment is not solely on the ground of sex. For the sake of convenience Articles 15(1) and 16(2) are extracted below:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.--(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

"16. Equality of opportunity in matters of public employment.-- (2) No citizen shall, on grounds only of religion, race, caste, sex descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

Shri. N.N. Sugunapalan, the learned senior counsel for the Board contended that no discrimination is practiced against women and no opportunity for employment is denied to them "on grounds only of sex". In other words, the classification is not based on sex but on the basis of the suitability of the candidates

vis-a-vis the job requirements. Such a classification is permissible, and therefore, Exts. P2 and P3 are not against the mandate of Articles 15(1) and 16(2) of the Constitution of India. It is contended that women will be exposed to insecurity and other risks while attending field work during night hours. It will be against public policy to assign such duties to women employees. Once a substantial number of the posts come to be occupied by women employees, the Board will not be able to carry out the huge volume of field work by engaging the remaining male workers only. The Board cannot afford to permit women employees who belong to the category of Electricity Worker to sit idle or attend office work alone leaving the arduous nature of work to be carried out exclusively by male workers. At present women employees constitute only a small percentage and the Board is able to manage the work in such a manner that the male employees can be asked to go for field work especially during night hours. Hence, it is not only in the best interest of the Board, but on public grounds also, that women are not allowed to apply for the post of Electricity Worker.

Learned senior counsel placed reliance on the decision of the Apex Court in ***Municipal Corporation of Delhi v. Female Workers (Muster Roll)*** {(2000) 3 SCC 224}.

10. In reply to the above contentions the learned counsel for the petitioners submitted that the Board's thought process is centuries old and it refuses to compromise with the realities of the present day world. It has underestimated the capacity of women by conveniently forgetting that they, in fact, do hard labour. They, to earn a living, are exposed to the vagaries of weather and do almost all kinds of work unmindful of the unfavourable conditions they would be subjected to, in and out the work place. The respondents cannot shut their eyes to the tremendous changes going on in the society and the constructive role played by women in the nation building process in the same manner and degree as their male counterparts in every sphere of activity. A unilateral and subjective opinion formed by the Board, whether in consultation with the P.S.C. or not, that the women are incapable of discharging the duties enumerated in Ext. P4 is an arbitrary conclusion contrary to realities.

The petitioners assert that they are willing to discharge the duties assigned to Electricity Workers (Mazdoor) in the service of the Board and they will not shirk their responsibilities or shy away from effectively doing such duties, if selected by the P.S.C. and appointed by the Board to the post of Electricity Worker.

11. In order to appreciate the merits and demerits of the rival contentions advanced by the counsel on either side in support of their plea, it will be useful to look back and trace the legal history and the march of events the society has witnessed. Before undertaking such an exercise, it is pertinent to recognize the fact that such a mission was undertaken and carried out in the 1970's and 1980's by the Hon'ble Judges of this Court. The Single Bench decision of this Court in *Vijayamma v. State of Kerala and others* by George Vadakkal, J. (cited supra) and the Division Bench judgment in *Rajamma v. State of Kerala & Others* (supra) by Subramonian Poti, Ag. C.J. and Paripoornan, J. (as the Hon'ble Judges then were) throw much light on this aspect. The opening sentence in *Rajamma's*

case, namely, "the attitude of courts in the United States of America in dealing with the plea of discrimination against women, in the early cases, is often referred to as romantic paternalism" reminds us the conservative outlook towards gender based discrimination even in a developed country like the United States of America. Significant changes in the attitude of courts about the establishment of equal rights for men and women and removal of gender based discrimination, is a post 1970 phenomena. The case history stretching for a period of 100 years provides interesting developments in the social thinking from the tradition bound conservative outlook to the civilized thinking of recognizing the equal rights of women among the citizens of that country. The case history commences from **Bradwell v. State of Illinois**, 16 Wall 131 (1873) to **Frontiero v. Richardson**, 411 U.S. 677 (1973). In the former case, a Chicago woman who was denied licence to practice law at the Bar was the aggrieved party. The court obsessed by the traditional thinking that women were unfit by nature to hold certain occupations such as that of being a member of

the Bar decided the case against the lady. Delivering the judgment Justice Joseph Bradley of the U.S. Supreme Court stated thus:

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organisation, which is founded in divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood."

In *Minor v. Happersett*, 21 Wall 163 (1875) the view expressed by the U.S. Supreme Court was against the right of women to vote. The Court held that though women had citizenship rights they need not necessarily be allowed to vote since voting is not a privilege or immunity. Similar was the attitude of the U.S. Supreme Court on the question of exclusion of women from jury duty. However, in the background of the agitation for establishment of civil rights in the 1950's a change of attitude in the judicial thinking was visible. And it is this change of attitude that makes *Frontiero v. Richardson* (cited supra) significant. In this case, speaking against the concept that law did not conceive

the husband as a dependent of the wife, the U.S. Supreme Court while negating that concept observed:

"..... gender-based classifications, like distinctions based on race and alienage, were inherently suspect."

The further observation has relevance in the context of the contentions raised on behalf of the Board and the same is therefore extracted:

"As a result, statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members."

It would be useful here to extract paragraph 27 of the Division Bench decision in Rajamma's case from the point of view of the uncompromising stand taken by the parties to this case:

"We find mention of a case in the publication of the United States Equal Employment Opportunity Commission titled 'Affirmative Action and Equal Employment' Volume 1 at page 8 which may be of relevance here. One Anaconda Aluminium Company was ordered to pay 1,90,000 dollars in back wages and court costs to 276 women who alleged that the company maintained sex-segregated job classifications. Job formerly classified "female" and "male" had been reclassified as "light" and "heavy", but women still were

prevented from transferring to "heavy" jobs, and after layoffs, the company hired new male employees into "heavy jobs" rather than recalling females with seniority in light jobs. The company was ordered to assure opportunity for all jobs to anyone who could qualify (1971)."

12. In England where there is no constitutional guarantee, unlike in our country where the right to equality is a fundamental right and discrimination 'on grounds only of sex' is against such fundamental right, opportunities for men and women for employment, remuneration, health etc. are regulated by appropriate enactments, such as, Sex Disqualification (Removal) Act, 1919, Equal Pay Act, 1970, Health and Safety at Work Act, 1974, and Sex Discrimination Act, 1975. The case of Mrs. Nagle who was running a Jockey Club and was denied trainer's licence on the sole ground that such licences were not granted to women is often quoted as an interesting judicial pronouncement by the Court of Appeal in England. Mrs. Nagle, who was non-suited by the trial court and the appellate court, was granted a decree by the Court of Appeal. The Jockey Club and the stewards of the Jockey Club sought to defend their action raising the plea that there was an unwritten

practice of refusing licence to women as trainers and jockeys in Great Britain. Though Mrs. Nagle was denied licence, her 'head lad' who was simply her servant was granted the licence. The Court of Appeal found that the Jockey Club was exercising a virtual monopoly in the matter of licence and by refusing or withdrawing the licence the stewards will be able to put a man out of his profession. The court held that the right to work at one's trade or profession was just as important to any person as or perhaps more important than his rights of property. Lord Denning expressed the view that just as the court would protect the right to property, the court would also intervene to protect the right to work. Dealing with the stand taken by the stewards that there was a practice of refusing licence to any women trainer and such refusal was merely on the ground that the applicant was a woman and for no other reason, Lord Denning said thus:

"The practice is so uniform that it amounts to an unwritten rule. The only way she can get round it is to get her head lad to apply. The licence is granted to him, not to her. It seems to me that this unwritten rule may well be said to be arbitrary and capricious. It is not as if the training of horses could be regarded as an unsuitable

occupation for a woman, like that of a jockey or speedway-rider. It is an occupation in which women can and do engage most successfully. It may not be a 'vocation' within the Sex Disqualification (Removal) Act, 1919, but still it is an occupation which women can do as well as men, and there would seem to be no reason why they should be excluded' from it. If this practice--this written rule--is invalid as being contrary to public policy there is ground for thinking that the court has jurisdiction to say so. It can make a declaration of right whenever the interest of the plaintiffs is sufficient to justify it (see Boulting v. Association of Cinematograph, Television and Allied Technicians)."

In the same case the observation of Danckwerts L.J. is in the following words "it may have appeared a natural attitude in Victorian times or earlier, but in present day conditions it seems to me to be restrictive and non-sensical" and the observation by Salmon L.J. is in the following words, viz., "it would be as capricious to do so as to refuse a man licence solely because of the colour of his hair. No doubt there are occupations such as boxing which may reasonably be regarded as inherently unsuitable for women; but evidently training racehorses is not one of them."

13. The learned Judges of the Division Bench in Rajamma's case pointed out that the mandate to the

State that it shall not discriminate against any citizen on grounds only of sex is one of the most important fundamental rules that calls for strict observance. It was also held that unlike the freedoms in Article 19 of the Constitution there is no scope for restricting the absolute scope of the rights under Article 15(1) of the Constitution and that there would be no scope whatever to justify differentiating between the male and female sexes in the matter of appointment. It was further observed that the right of women should not be denied on fanciful assumptions of what work the woman could do and could not do and that whether the work is of an arduous nature and therefore unsuitable for women, must be decided from the point of view of how women feel about it and how they would assess it. The following observations also appear to be relevant in the background of the contentions raised by the Board. The Division Bench towards the end of paragraph 34 of the judgment in Rajamma's case said thus:

"..... It is regrettable that decisions of material consequence said to be in the so called interests of women purporting to protect the position of women are generally taken not after any consultation with representative bodies of

women, but unilaterally by the administrators, most of whom carry with them the hang over of the past, the past of male domination in our social set up."

The learned Judges of the Division Bench expressed the hope that a time will come when all posts excepting those which due to physical reasons a woman cannot take up must be available to them and warned that the attempt should not be to perpetuate discrimination but to obliterate it. The Division Bench concluded the judgment in Rajamma's case expressing the need for attention to affirmative action in the area of sex discrimination and with the following words:

".... We learn by experience. The experience of the story of sex and minority discrimination in the United States and the impact of the affirmative action programmes adopted in that country deserve closer study."

14. Participation of women in every sphere of activity carried on by the civilized modern society is the rule and denial of opportunity for such participation is the exception. The attempt should be to broaden the area and the range of participation. Exclusion of women from such activities has to be

discouraged. Discrimination on the ground of sex is anathema to the constitutional philosophy of equality among men and women. True it is, as contended by the senior counsel for the Board, the impugned exclusion would offend Article 16(2) only when it is done "on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them." In the instant case, according to the Board, women are considered ineligible not on the basis of the gender but due to physical reasons.

15. Though the above contention in the first blush, appears to be attractive, it falls to the ground in the light of the discussions made and the weighty reasons given with reference to an identical question posed for the consideration of this Court in *Vijayamma v. State of Kerala* (cited supra). *Vijayamma*, the petitioner in that case, was not considered for promotion as Stenographer in the Police Department, because women were found unsuitable for that work having regard to the 'peculiar nature' of the job requirements, namely, touring along with officers and working at odd hours. The court found that the real

and substantial reason for, and the direct and immediate ground of her ineligibility for promotion was that she was a woman. It was held that whatever be the ultimate reason behind the order, and however, 'laudable' it may be, that would not remove the prohibition of Article 16(2), for 'the effect of the order involves an infringement' of her fundamental right under Article 16(1), and that effect is brought about by denying promotion to the petitioner in the Police Department only on the ground of sex. The learned Judge noticed that the words 'on grounds only of sex' in clauses (1) of Article 15 and (2) of Article 16 of the Constitution of India appear to have been taken from Section 298(1) of the Government of India Act, 1935 which reads as follows:

"298(1). No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India."

In that context the learned Judge referred to the decision of the Privy Council in **Punjab Province v.**

Daulat Singh (AIR 1946 P.C. 66). The following statement of law made in *Daulat Singh* (supra) appears to be useful and relevant:

"..... The proper test as to whether there is a contravention of the sub-section is to ascertain the reaction of the impugned Act on the personal right conferred by the sub-section, and while the scope and object of the Act may be of assistance in determining the effect of the operation of the Act on a proper construction of its provisions, if the effect of the Act so determined involves an infringement of such personal right, the object of the Act, however laudable, will not obviate the prohibition of sub-section (1)."

The Supreme Court in ***State of Bombay v. Bombay Education Society*** (AIR 1954 S.C. 561) adopted the construction and the statement of law in *Punjab Province* case.

16. The effect of Exts. P2 and P3 is denial of employment or opportunity to women to apply for appointment to the post of Electricity Worker in the Kerala State Electricity Board, of course, projecting physical reasons, public policy, social security etc. as justifiable grounds. It cannot, however, reasonably be contended that the nature of duties and responsibilities of Electricity Workers (Mazdoors)

would justify total exclusion of women from that category of employment. Women candidates cannot be condemned as inherently incapable of performing those duties.

17. Dr. A.S. Anand, the former Chief Justice of India, in his book "Justice for Women *concerns and expressions*" has referred to certain facts pertaining to gender equality and the inequality and injustice suffered by women. Some of those materials are relevant in the context of the issue discussed herein.

18. In 1993 the World Conference on Human Rights was held at Vienna. After due deliberations the international conference declared that:

"The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.... The world conference on human rights urges governments, institutions, inter-governmental and non-governmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

Subsequently, the Fourth World Conference on Women held

in Beijing in September, 1995, concluded that issues critical to the future well being of the women in terms of resource development, protection of environment, establishment of peace, improvement of health and education depend on the adjustment of the status of women and suggested a multi-pronged, integrated approach. About 166 countries including India subscribed to the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW). The Convention recognised the fact that discrimination against women hampers economic growth and prosperity and detrimentally affects the society in general. Let us remember the words of great men that in order to make gender equality a reality, economic independence of women is of paramount importance. Awareness among them about their rights and responsibilities can be better achieved by the eradication of illiteracy among them and providing opportunities for education and total development. The status of women in certain parts of our country is slowly improving. Thanks to the good work done by the legislatures, the judiciary and the social activists. At the international level,

prohibition against sex discrimination was first articulated in the United Nations Charter of 1945 and later reiterated in the Universal Declaration of Human Rights of 1948. The International Covenant on Economic, Social and Cultural Rights approved in 1966 guarantees equal protection of the law to both sexes. It promises women *equality of status*. The Fourth World Conference on Women held at Beijing reaffirmed gender *equality as a fundamental pre-requisite for social justice*. The preamble of CEDAW proclaims that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."

19. Women constitute half the world's population, perform nearly two-thirds of its work hours, receive one-tenth of the world's income and less than one-hundredth of the world's property (1980 UN Report). Women comprise 66 per cent of the world's illiterates and 70 per cent of the world's poor.

20. Lord Denning in his Due Process of Law said:

"A woman feels as keenly, thinks as clearly, as a man. She in her sphere does

work as useful as man does in his. She has as much right to her freedom--to develop her personality to the full--as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in the life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals."

Justice V.R. Krishna Iyer in his 'Law and Life' said:

"The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes."

21. The pursuit for employment to earn a living has been recognized as a legitimate human activity by every civilized society. Article 16 of the Constitution guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits the State from making ineligible any citizen on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Discrimination based on any of the grounds mentioned above in the matter of employment or appointment to any office under the State is unconstitutional. In **C.B. Muthamma v. Union of**

India (AIR 1979 SC 1868) the Apex Court struck down the service condition requiring a female employee to obtain the permission of the Government before her marriage is solemnized. It was held that the denial of employment on such grounds is tantamount to discrimination based on sex and was held ultra vires. In the above decision the Supreme Court observed:

"We do not mean to universalise or dogmatise that men and women are equal in all requirements of particular employment, the sensitiveness of sex or the peculiarities of social sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern."

22. Experience and history have proved that women are as competent and capable as men in a number of jobs and posts which were once upon a time considered to be the monopoly of men. To say that there are very good administrators, scientists, doctors, engineers, lawyers, social activists, politicians etc. among women is neither exaggeration nor revelation. It is a fact well recognized. Women have established their mettle as pilots, truck drivers, archaeologists, effective team members in exploration ventures, voyages and space

crafts. They bring laurels as athletes and trophies winning tough games. Acrobatics, gymnastics and feats of valour are not alien to them. Members of the fair sex, both girls and adults, who earn their livelihood as members of professional circus companies are not unfamiliar to our polity. Women get enrolled as commissioned officers in the defence services and as officers and constables in the police department. These illustrations must caution us that while identifying the prohibited area set for women, we shall not be guided by the traditional conservative social inhibitions and shall not exclude women from seeking employment solely on the ground that the job involves physical or manual labour. They do hard physical labour in the construction of multistoried buildings, public roads, bridges and dams.

23. The petitioners assert that they are confident and willing to perform the duties and responsibilities of Electricity Worker as prescribed in Ext. P4 including climbing the poles, erection of transformers, drawing cables and assisting the repair and maintenance of electric lines, transformers, street lights etc.

The respondents cannot contend that women are inherently incapable of performing the above duties. It may be that a major section of the women may shy away from such sectors as they themselves put limitations on their physical capacity or subject themselves to the traditional thinking of the society. But women who come forward to break such conservative traditions and limitations and feel that they are capable of discharging such duties and offer themselves as candidates for such posts shall not be told by the agencies and instrumentalities of the State that they are incapable and unsuitable for such work because they are females. Exclusion of women based on such reasons will amount to exclusion based on sex offending Articles 14, 15 and 16 of the Constitution of India. Hence, I hold that Exts. P2 and P3 are unconstitutional to the extent they deny opportunities to female candidates from applying for the post of Electricity Worker under the direct recruitment quota. Note (1) of Ext. P3 in as much as it says that women are not eligible for the post is liable to be struck down. I do so. Ext. P2 issued in terms of Note (1) of Ext. P3

to the extent it denies opportunity to female candidates to apply for the post is also illegal and violative of the fundamental rights. Hence, that part of Ext. P2 notification which excludes women from applying for the post shall stand struck down.

24. Neither Ext. P2 nor Ext. P3 excludes women absolutely from getting employment as Electricity Worker. Note (1) says that women who seek employment as the dependents of Board's employees and are eligible to be appointed under the compassionate employment scheme are not excluded. Another category of women who are eligible to be appointed as Electricity Worker is Part-time Contingent Workers. Of course, 5 per cent vacancies alone are reserved for them. Exts. P2 and P3 prescribe the required minimum height of women candidates as 4'9". The condition that they must be physically fit for outdoor work is applicable to women candidates also. If women candidates who get appointment on compassionate grounds as dependents of Board's employees are competent and eligible to perform the work of Electricity Worker, notwithstanding their sex, the respondent-Board cannot

be heard to say that women who seek employment under the direct recruitment quota would be unsuitable for the job, for physical reasons. In that respect also, Exts. P2 and P3 are discriminatory and violative of Articles 14 and 16 of the Constitution.

25. Shri. N.N. Sugunapalan, senior advocate appearing for the respondent-Board submitted that the Apex Court in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (cited supra), had occasion to observe that women in rural areas who are poor and illiterate were forced by sheer poverty to come out to seek various jobs so as to overcome the economic hardship. It was also observed that they take up jobs which involve hard physical labour. In the background facts of that case, the Hon'ble Supreme Court stated that the female workers who are engaged by the respondent-Corporation have to work at the site of construction and repairing roads and that their services had always been utilised for digging of trenches. In paragraph 33 of the above judgment the Apex Court observed as follows:

"A just social order can be achieved only when inequalities are obliterated and

everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period."

Learned senior counsel for the Board submitted that the Board is worried about the physical limitations and hazards to which the women employees may be subjected to. When the petitioners assert that they are prepared to do the job and as long as the duties to be performed are not inherently incapable of being performed by women, total exclusion is unjustifiable. Borrowing the words and the idea expressed by Subramonian Poti (Ag.C.J.) in Rajamma's case, I need only say that the

right of women should not be denied on fanciful assumptions of what work the woman could do and could not do and that whether the work is of an arduous nature and therefore unsuitable for women, must be decided from the point of view of how women feel about it and how they would assess it. It is for the Electricity Board to evolve and introduce meaningful procedure so as to utilise as effectively as possible the service of women employees who may be appointed as Electricity Workers.

26. Ext. P2 notification, in the normal course, is liable to be set aside as a whole since one section of the candidates are not allowed to apply for the post of Electricity Worker. Counsel for the P.S.C. submits that candidates who had submitted their applications have been called for test and if the notification is set aside in its entirety, those candidates will be subjected to hardship. Having regard to the above submission, I am of the opinion that justice can be done to the women candidates by directing the P.S.C. to publish a supplementary notification inviting applications exclusively from women for the post of

Electricity Worker (Mazdoor). Since the basic notification is Ext. P2, the qualifications and the eligibility conditions to be possessed or satisfied by those women candidates shall be as on the last date fixed for the receipt of applications as per Ext. P2. Ordered accordingly.

27. The supplementary notification inviting applications from women candidates for the above post shall be published by P.S.C. within one month from the date of receipt of a copy of this judgment. Applications received pursuant to that notification shall be processed and after due elimination of those who are ineligible or not qualified to apply for the post, others shall be called for a practical test after verification of the height prescribed for female candidates in Exts. P2 and P3. The practical test should include in general such items which will prove or establish the capacity of the candidates to undertake the duties of Electricity Worker. A gist of the important duties prescribed for the post of Electricity Worker shall be furnished in the P.S.C. notification inviting applications, so that only those

who are capable and willing to perform such duties need apply for the post. This is necessary to eliminate the tendency on the part of candidates pleading excuses and avoiding duties involving arduous nature, on the ground of physical incapacity etc., after entry into service. No doubt, the State shall not deny eligible and qualified citizens the opportunity to seek employment, but it is equally important that those who are paid wages or emoluments from public funds do render the required service, quality-wise and quantity-wise. Certainly, besides concessions as stated in Municipal Corporation of Delhi (cited supra), the safeguards provided by law to women employees whenever and wherever applicable as contained in Section 66(b) of the Factories Act dealt with in ***Omana Oomen v. FACT Ltd.*** {1990 (1) KLT 614}, the provisions of the Maternity Benefit Act, 1951, the Industrial Disputes Act, 1948 and the provisions in Part IV of the Constitution of India shall always be available to them.

28. The selection process commenced and being continued as per Ext. P2 notification will be kept in

abeyance for such time as necessary to keep pace with the publication of the supplementary notification as ordered above and the selection process including the conduct of practical test for the women candidates, so that a common/combined ranked list for male and female candidates will be published by P.S.C. The above exercise shall be completed as early as possible.

The writ petition is allowed as above.

K.K. DENESAN
JUDGE

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